

REMARKS

Reconsideration of the application is respectfully requested for the following reasons:

1. Objections to Drawings

These objections have been addressed by:

- amending Fig. 4 by changing reference numeral 67, designating the battery compartment, to reference numeral 68, and by making a corresponding amendment to line 8 on page 11 of the original specification;
- amending Fig. 3 to include reference numeral 64 designating the hole in mobile arm upper housing 12; and
- amending line 5 on page 10 of the original specification to include reference numeral 13 designating the mobile arm lower housing.

2. Claim Objections

This objection has been overcome by amending claim 1, line 3, to recite a receiver rather than “an receiver,” as suggested in the first paragraph on page 3 of the Official Action.

3. Rejection Under 35 USC §112, 2nd Paragraph

This rejection has been addressed by:

- amending claims 3 and 6 to positively and consistently recite the button on the second remote control;
- amending claim 5 to refer to the “button” of claim 3 and to more clearly recite the deactivation function of the on/off (“second”) switch, as described in lines 10-13 on page 12 of the original specification;
- amending claim 11 to delete the word “first”;
- amending claim 17 to delete the word “second”; and
- amending claim 14 to recite that the first transmitter communicates with the second receiver rather than transmitter.

4. Rejection of Claims 1-17 Under 35 USC §103(a) in view of U.S. Patent Nos. 6,203,395 (McElhaney) and 6,113,455 (Whelan), and the Publication Entitled "Kick Start Busy Crib Center" (the Kick Start Publication)

This rejection is respectfully traversed on the grounds that none of the three references applied in this rejection discloses or suggests the claimed *combination* of a **crib mobile with a kick-bar activated remote control**, as recited in claims 1 and 8, much less the combination of a crib mobile with **two** remote control units, one of which is a kick-bar unit, as recited in claims 3-6, 11, 12, and 14-17.

The McElhaney patent merely discloses a conventional kick-bar activated crib activity center, in which lights and sounds are activated when the kick-bar is kicked. The kick-bar unit of McElhaney does not include any sort of transmitter, and does not serve to remotely activate a mobile, or any other device.

The Whelan patent, on the other hand, discloses a remote-controlled mobile similar to those described in lines 3-16 on page 3 of the original disclosure, including a conventional parent-activated remote control. The Whelan patent does not suggest modification of the remote control so that it can be activated by a baby, *i.e.*, by putting the remote control transmitter in a kick-bar unit, and therefore could not have suggested modification of the kick-bar unit of McElhaney to include such a transmitter.

Finally, the Kick Start Publication discloses a kick-bar activated crib activity center that is almost identical to the crib activity center of McElhaney, again with no suggestion to use the kick-bar to activate a remote control transmitter so that the infant can remotely activate a mobile.

According to the Official Action, modification of the McElhaney crib gym in view of the Whelan patent and Kick Start publication is justified because the result is "more entertaining and conveniently controllable." However, this justification is pure hindsight.

Neither the Whelan patent nor the Kick Start publication suggests that providing a remote control on a kick-bar center will improve the entertainment value of the kick-bar center.

While the combination may, in fact, be more entertaining than the prior art, the reason it is more entertaining is that the combination gives the infant control over the activation of a remotely located device. The Whelan patent does not give the infant control over a remotely located device, but rather gives parents control, while the Kick Start publication does not include any sort of remote control. It is of course well-known to provide different types of devices with remote controls that can be operated by non-infants. However, none of the references of record discloses or suggests any sort of remote control device, and particularly one for a crib mobile, that can be operated by infants.

The claimed combination, suggested only by the Inventor, gives infants powers that go way beyond the power provided by the kick-bar of McElhaney, since it permits the infant to operate a device that is unconnected, from the infant's point-of-view, to the kick-bar. The parent-operated remote control of Whelan of course gives no such power to the infant, and does not add to the entertainment value of the basic crib mobile, while the Kick Start activity center adds nothing relating to remote control to the capabilities of the activity center taught by McElhaney.

Furthermore, none of the devices disclosed in the applied references is operated by two remote controls, one controlled by an infant and one by a parent, as recited in the dependent claims and independent claim 14. A parent/infant jointly-operated remote-controlled crib mobile could hardly have been suggested by any of the references of record since none of the references suggests any sort of infant-operated mobile, much less an infant-operated remote control.

The Examiner is reminded that it is improper to base a rejection on the advantages of a combination that is not itself suggested by any of the references. As explained, for example, in, *In re Fritch*, 23 USPQ2d 1780,1783 (Fed. Cir. 1992):

'Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so [quoting ACS Hosp. Systems, Inc. v. Montefiore Hosp., 221 USPQ 929,933 (Fed. Cir. 1984)].' Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious 'modification' of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification [emphasis added].

It is respectfully submitted that while the elements of the claimed combination were known and *could* have been combined to obtain an infant-activated remote control, and even though the result of the combination is advantageous, the fact is that the ordinary artisan did not make such a combination, and none of the references suggests such a combination.

While the Examiner might be able to base a rejection on knowledge that he knows would have been available to those of ordinary skill in the art at the time the invention was made, and that are not explicitly in the references, he should be very careful to ensure that the knowledge is knowledge which in fact would have caused the ordinary artisan to make the modification, and that the Examiner has not in fact, upon viewing the invention, decided that because the combination is advantageous, those skilled in the art must have been thought to carry it out. Actually, the opposite is true. The fact that the combination is advantage and yet not disclosed in any reference is evidence that it is not obvious—*i.e.*, if anyone had thought of an infant-activated remote control, the concept would have been disclosed precisely because it is so advantageous.

Because the non-remote kick-bar units and conventional parent-operated remote control of the applied references are not, in themselves, suggestive of an infant-operated remote control, *i.e.*, of the claimed **combination** of a remote-controlled mobile transmitter and a kick-bar unit, withdrawal of the rejection of claims 1-17 under 35 USC §103(a) is respectfully requested.

Serial Number 10/092,896

Having thus overcome each of the objections and rejections made in the Official Action, withdrawal of the rejections and expedited passage of the application to issue is requested.

Respectfully submitted,

BACON & THOMAS, PLLC

A handwritten signature in black ink, appearing to read 'By [unclear]', with a long horizontal flourish extending to the right.

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PROPOSED DRAWING CORRECTIONS
FOR APPROVAL BY EXAMINER

S.N. 10/092,896
GAU: 3712
Ex'r: A. Abdelwahed

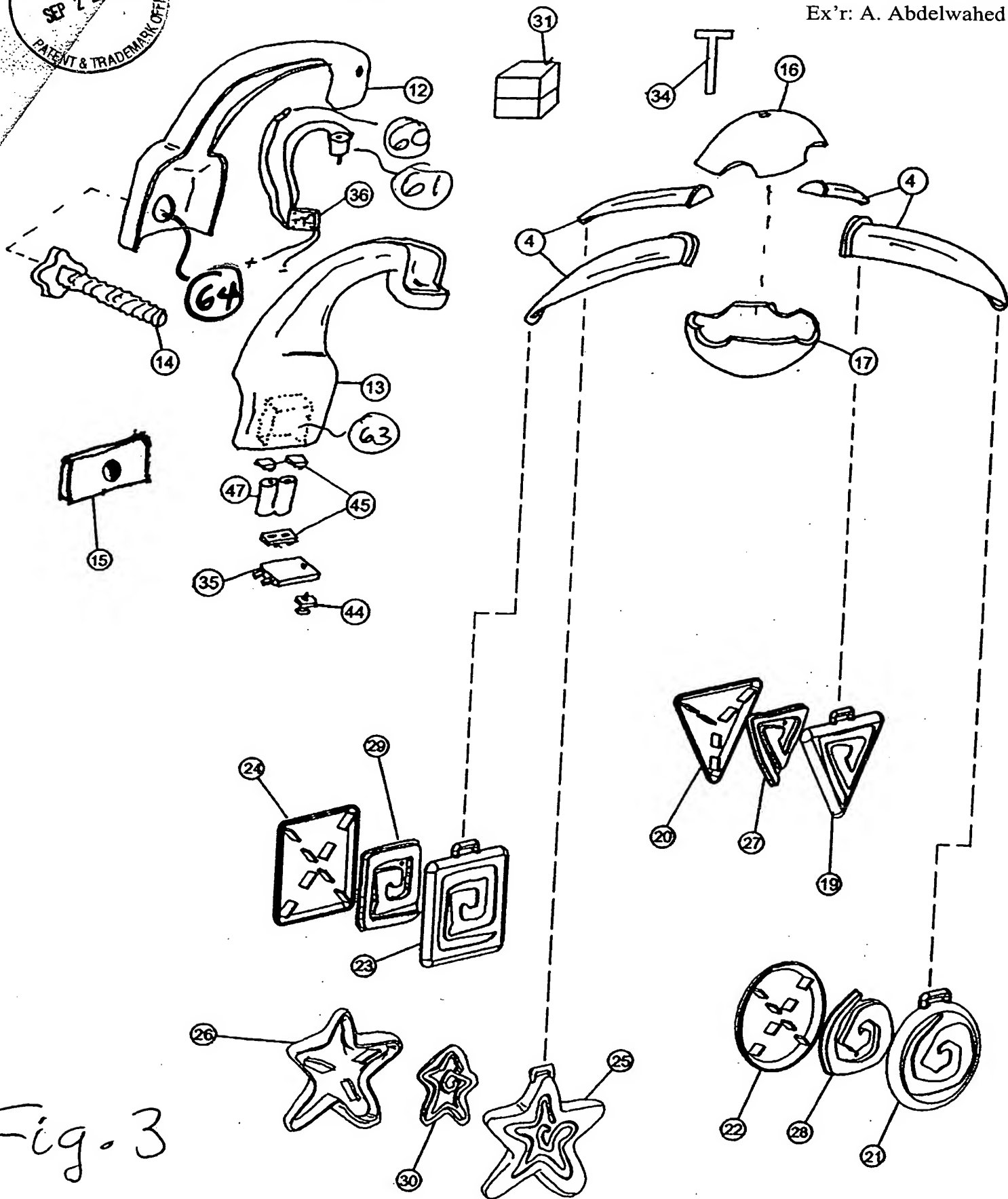


Fig. 3

PROPOSED DRAWING CORRECTIONS
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Fig. 4

